

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:13-cr-00338-MOC

JARIUS Q. ERWIN,)	
)	
Appellant,)	
)	
Vs.)	BRIEFING
)	ORDER
)	
UNITED STATES OF AMERICA,,)	
)	
Appellee.)	

THIS MATTER is before the court on appellant's pro se Notice of Appeal from the Judgment entered by a United States Magistrate Judge revoking appellant's probation imposed upon conviction of a Class A misdemeanor and imposing a 10 month active sentence. Construing such Notice of Appeal liberally, Erickson v. Pardus, 551 U.S. 89, 94 (2007), it appears that appellant has raised two issues on appeal:

- I. That Appellant Received a Sentence that was Not Consistent with his Criminal History and/or the factors contained in Section 3553(a); and
- II. That Appellant Received Ineffective Assistance of Counsel in the Probation Violation Proceeding.¹

Inasmuch as a claim that trial counsel was ineffective has been made, the court will direct the Federal Defender to appoint a panel attorney to represent appellant during the course of this appeal.

¹ The court notes that claims of ineffective assistance of counsel are not typically cognizable on direct review. United States v. Benton, 523 F.3d 424, 435 (4th Cir.2008). However, this court can entertain such claims on direct appeal if it conclusively appears from the record that defense counsel did not provide effective representation. United States v. Richardson, 195 F.3d 192, 198 (4th Cir.1999).

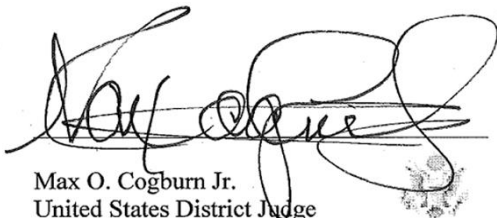
ORDER

IT IS, THEREFORE, ORDERED that

- (1) having construed petitioner's Letter (#13) as a Notice of Appeal to the district court, the court directs the Federal Defender to appoint appellant a new appellate attorney from the panel;
- (2) newly appointed counsel for appellant shall have 14 days from appointment within which to consult with appellant and file an amended Notice of Appeal, if necessary, and a supporting brief;
- (3) the Clerk of Court is directed to have transcribed the FTR recording of the Final Probation Revocation Hearing held October 8, 2013, and make such transcript available to the appellant at no cost; and
- (4) within 14 days of appellant filing his amended Notice of Appeal and supporting brief, the government shall file its brief in response.

The court does not anticipate that a Reply or oral arguments will be necessary. If a party desires to file a Reply or believes that Oral arguments will assist the court, a motion should be promptly made after the Response is filed.

Signed: December 30, 2013



Max O. Cogburn Jr.
United States District Judge